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October 27, 2004

Via Hand Delivery and Electronic Mail

The Honorable Randy Mitchell, Chairman
Public Service Commission of South Carolina
100 Executive Center Drive
Saluda Building Suite 100
Columbia, South Carolina 29210

Re: South Carolina Electric and Gas Company
Docket No. 2004-178-E

Dear Chairman Mitchell:

I am writing to respond to the October 25, 2004 letter of counsel for SCE&G Francis P. Mood and to the discussion of this letter at a pre-hearing conference held yesterday afternoon at the Commission's offices. In that letter, SCE&G has raised its concerns regarding the Commission's retention of Mr. Scott Hempling to assist the Commission in the hearings in this case.

The Company's first concern is that Mr. Hempling is not admitted to practice law in the State of South Carolina, which could necessitate employing an attorney licensed to practice in South Carolina to move Mr. Hempling's admission *pro hac vice*. Despite describing this arrangement as an "awkward" one, the Company has not cited any rule or regulation which would prohibit the Commission from fully utilizing Mr. Hempling as its legal advisor in this case, with Ms. Boyd as his sponsor.

The Company's second concern involves the application of the Canons of Judicial Ethics to the Commission by the passage of Act No. 175. Specifically, the Company cites Canon 3.b.7(b) and argues that the Commission cannot retain the services of Mr. Hempling to advise it in this case. This rule provides that a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Nowhere in its letter has SCE&G alleged that Mr. Hempling is not disinterested or that he is not an expert in the field of public utility regulatory law. If Mr. Hempling were to act as the Commission's legal advisor in this case, it is clear from the discussions at the pre-hearing conference that all parties of record already have notice of who the person consulted would be. The substance of the advice will also be clear, whether it is in the form of oral recommendations during the course of the hearing, or a written proposed order. In the case of offering recommended rulings during the hearing, parties will be able to state their positions in advance of any ruling. In the case of post-hearing recommendations, the Commission could require that any recommendations on the Commission's final decision in this matter from Mr. Hempling be in writing, and served upon the parties with a chance to respond before the Commission votes on this matter. This procedure is not unusual in other states. Furthermore, contrary to the Company's contention in its letter, this procedure would not turn the legal expert into a "court witness" that would be required to pre-file testimony, and be subject to deposition and cross-examination. Canon 3.b.7(b) does not even mention the concept of a court witness. Any recommendations Mr. Hempling would offer to the Commission in this case would clearly be limited to an evaluation of the evidence of record provided by the parties in this case. He would not be providing any additional off-the-record evidence as the letter seems to suggest.

Additionally, the Company cites Canon 5 of the S.C. Appellate Court Code of Conduct for Staff Attorneys and Law Clerks to state that this rule would require Mr. Hempling to withdraw from his law firm and discontinue representing his clients in order to assist the Commission in this case. However, although the parties have not been provided a copy of the Commission's contract with Mr. Hempling to review, it seems clear that he has not been hired as a staff attorney or law clerk, even on a temporary basis, but as an expert legal advisor. It also seems clear that this rule was not intended to apply to disinterested legal experts retained under the provisions of Canon 3.b.7(b).

Finally, S.C. Code Ann. § 58-3-60, as amended by Act No. 175, permits the Commission to employ, among other persons, other professional personnel as the commission determines to be necessary in the proper discharge of the Commission's duties and responsibilities as provided by law. Therefore, even if the Commission had concerns about employing Mr. Hempling as a legal advisor, it could retain him as an expert technical advisor to supplement the Commission's in-house technical advisors in its evaluation of the evidence of record in this case.

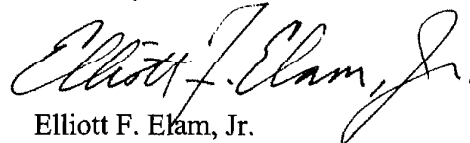
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In sum, it seems clear that the Commission believed that retaining Mr. Hempling would be beneficial to its consideration of the evidence in this case. The concerns raised in the Company's letter should not persuade the Commission to retreat from its intended use of Mr. Hempling's services in this matter. The Commission should not, as was suggested at the pre-hearing conference, restrict its use of an individual of Mr. Hempling's qualifications to the role of merely assisting in drafting the final order, if necessary. Such a decision would be a waste of his time and of the Commission's resources.

Sincerely,

A handwritten signature in cursive script, reading "Elliott F. Elam, Jr.", written in black ink.

Elliott F. Elam, Jr.

Acting Consumer Advocate

cc: The Honorable George Dorn